

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. If tangible personal property is not transferred, tax is not incurred. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

December 23, 2004

Dear Xxxxx:

This letter is in response to your letter dated September 20, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is an STATE Corporation and has contracts with several major store chains to provide a variety of services, including air filter change-out service, return air grille cleaning service, and drink/food cooler/freezer cleaning service. We have been asked to provide these services in your state.

This letter is an attempt to fully explain the nature of our business, and have you review a couple of our representative invoices in order for you to provide us with your determination as to which items are sales taxable, and which are not. This will enable us to be in compliance with the sales and use tax guidelines for your state.

Our service can be compared somewhat to XYZ, or other type of janitorial service company, coming by a place of business on a pre-determined monthly, bi-monthly, or quarterly schedule, depending upon the contract. We replace all of the air filters each service. Depending upon the customer, we may vacuum the return air grilles in the walls or ceilings. In some locations we perform drink and/or food cooler and freezer cleaning. This cleaning involves cleaning the door seals and vacuuming the condenser coils. We do not provide any repair service of any kind on the equipment we service.

The filters sold to the customer are either manufactured by our company in STATE, or purchased by our company from other air filter manufacturers, tax-exempt. They are

delivered to our warehouse in your state via common carrier. The filters are then distributed from that warehouse via our company trucks to our customers where the service is performed. There are times when we will service customers in your state from a warehouse located in another state. When the customers in your state are serviced from another state, the filters are transported into your state via our company trucks.

I am enclosing sample copies of our invoices with areas to annotate the applicable taxable items. Some of our customers request we itemize the material and service items to show the breakdown of material and labor. Others do not want an itemization of labor and material, so we show it as "Air Filters Serviced." We always list the grille, and cooler cleaning services separately. Please let us know which line items to tax, or not tax, for each type of service.

If there are any other considerations, like service to real vs personal property, recurring (scheduled) services, please advise as well. Are there any further considerations for sales and services to tax-exempt entities?

We are, also, a manufacturing company and provide sales directly to customers. These customers may, or may not, be our service customers. What are the tax considerations for direct sales delivered mainly by common carrier? Is freight taxable in your state?

If you need any additional information regarding the services we provide, or would like to call and discuss further, please call me. We want to be a good corporate citizen in your state. We currently provide these services in excess of 35 states and have several different guidelines we are required to follow.

Please reply to my attention at the address above.

DEPARTMENT'S RESPONSE:

Sales to Customers

For general information purposes, the Illinois sales and use tax system is unique because it codifies four separate taxes: The Retailers' Occupation Tax, (86 Ill. Adm. Code 130.101 et seq.), the Use Tax, (86 Ill. Adm. Code 150.101 et seq.), the Service Occupation Tax, (86 Ill. Adm. Code 140.101 et seq.), and the Service Use Tax, (86 Ill. Adm. Code 160.101 et seq.).

The Retailers' Occupation Tax is what is commonly referred to in other locales as "sales" tax. However, the Retailers' Occupation Tax is not a sales tax, but rather an occupation tax. The Retailers' Occupation Tax is imposed on persons engaged in the business of selling tangible personal property at retail. The complement of the Retailers' Occupation Tax is the Use Tax, which is essentially a privilege tax imposed upon the privilege of using, in Illinois, tangible personal property purchased anywhere at retail. The current tax rate is 6.25% plus any local taxes if applicable.

In computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's gross receipts subject to tax, even if separately stated on the bill to the customer. See 86 Ill. Adm. Code 130.410. Handling charges, such as the "service fee," represent a retailer's cost of doing business, and are not

deductible from the gross charges subject to tax. Shipping charges, in general, are not taxable if it can be shown that they are separately agreed to and are actually reflective of the costs of shipping. See 86 Ill. Adm. Code 130.415. Charges exceeding actual shipping costs are subject to tax.

The Department notes that your letter states that you have a warehouse located in Illinois and are providing services in Illinois. So long as that is the case, you should collect and remit Illinois tax on transactions where you make deliveries or retail sales to Illinois customers.

Service Transactions

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. If tangible personal property is not transferred, tax is not incurred. For your general information please see 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax. These rules can be found on the Department's website. Once on the website, click on "Legal Research". Then click on "Regulations." The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified.

There are four ways that the tax can be calculated:

- (1) Separately stated selling price;
- (2) 50% of the entire bill;
- (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or,
- (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base.

Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis, if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service.

Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

De minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act may use the final method of determining tax liability. Servicemen may qualify as de minimis, if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis. See 86 Ill. Adm. Code 140.109.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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